

PATRICK L. FORTE, #80050
ANNE Y. SHIAU, #273709
LAW OFFICES OF PATRICK L. FORTE
One Kaiser Plaza, #480
Oakland, CA 94612
Telephone: (510) 465-3328
Facsimile: (510) 763-8354

Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

Case No. 07-44557 WJL

**MANUEL NIEZ CANTIGA, JR. and
ROSIE TAN CANTIGA,**

Chapter 13

Debtors.

**DEBTORS' MOTION TO PRECLUDE
CREDITOR LITTON LOAN
SERVICING, LP AS SUCCESSOR TO
WACHOVIA MORTGAGE FROM
PRESENTING OMITTED INFORMATION
AND REQUEST FOR ATTORNEY'S
FEES**

Manuel and Rosie Cantiga ("Debtors"), by and through their attorney, the Law Offices of Patrick L. Forte, move this Court for an Order precluding Litton Loan Servicing, LP as successor to Wachovia Mortgage ("First Mortgage Creditor") from presenting any omitted information as related to its loan, as evidenced by its proof of claim filed in the instant case which was designated as court claim #10 regarding 1) the cure of pre-petition mortgage default or 2) post-petition mortgage default from December 31, 2007 until the date an Order is entered on this motion for the property located at 5465 Cerro Sur, Richmond, CA 94803, in any form, as evidence in any contested matter or adversary proceeding, as well request attorney's fees incurred in bringing this motion due to the failure of First Mortgage

1 Creditor to respond to Martha G. Bronitsky's, Chapter 13 Trustee
2 ("Trustee"), Notice of Final Cure Payment, filed on March 28, 2013 as
3 docket #60, pursuant to Federal Rule of Bankruptcy Procedure
4 3002.1(i).

5 This Motion is based on the petition, schedules, and documents on
6 file herein, the Memorandum of Points and Authorities in Support of
7 the Motion and Declaration of Attorney in Support of the Motion filed
8 herewith, and upon such oral and documentary evidence as may be
9 presented by the parties at the hearing.

10 Based on the foregoing, and for the reasons stated in the
11 attached Memorandum of Points and Authorities, Debtors allege that
12 First Mortgage Creditor had 21 days to respond to the Trustee's Notice
13 of Final Cure filed on March 28, 2013 as docket #60 as required by
14 Federal Rule of Bankruptcy Procedure 3002.1(g), however failed to do
15 so. Accordingly, an Order precluding any information that First
16 Mortgage Creditor had the opportunity to present and an award of
17 attorney's fees is appropriate pursuant to Federal Rule of Bankruptcy
18 Procedure 3002.1(i).

19
20 WHEREFORE, Debtors pray for judgment as follows:

- 21 1. For an Order precluding Litton Loan Servicing, LP as successor
22 to Wachovia Mortgage from presenting any omitted information as
23 related to its loan, as evidenced by its proof of claim filed
24 in the instant case which was designated as court claim #10,
25 regarding 1) the cure of pre-petition mortgage default or 2)
26 post-petition mortgage default from December 31, 2007 until the

1 date an Order is entered on this motion, in any form, as
2 evidence in any contested matter or adversary proceeding.

3 2. An award of attorney's fees to The Law Offices of Patrick L.
4 Forte in the amount of \$875 which will be the sole
5 responsibility of First Mortgage Creditor to pay and which may
6 not be, in any way, added to Debtors' loan as this fee was
7 incurred in bringing this motion due to the failure of First
8 Mortgage Creditor to respond to the Chapter 13 Trustee's Notice
9 of Final Cure Payment as required by Federal Rule of Bankruptcy
10 Procedure 3002.1(g).

11 3. For such other relief as the Court deems proper.
12

13 Dated: April 30, 2013

14 /s/ Anne Y. Shiau
15 ANNE Y. SHIAU
16 Attorney for Debtors
17
18
19
20
21
22
23
24
25
26